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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,004	02/27/2004	Samuel A. Vona JR.	3045.PC	6885

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NATIONAL STARCH AND CHEMICAL COMPANY
P.O. BOX 6500
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EXAMINER

MERCIER, MELISSA S

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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01/23/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@nstarch.com

Office Action Summary

Application No.

10/789,004

Applicant(s)

VONA, SAMUEL A.

Examiner

Melissa S. Mercier

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2-27-04, 7-29-05, 10-11-07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Applicants Amended Claims and Remarks file don November 9, 2007 is acknowledged. Claims 18-29 are pending in this application.

Election/Restrictions

Applicant's election with traverse of corn starch in the reply filed on November 09, 2007 is acknowledged. The traversal is on the ground(s) that the disclosed species are obvious variants of each other and are connected in design.

The requirement is therefore WITHDRAWN. Applicant is reminded that if the examiner finds one of the species unpatentable over the prior art, the admission may be used in a rejection under 35 USC 103(a) of the other species.

Information Disclosure Statement

Receipt of the Information Disclosure Statements filed on February 27, 2004, July 29, 2005, and October 11, 2007 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has not provided adequate written description for "high amylose starch". Applicant has defined the term to include a starch containing at least about 50% amylose; however, applicant has not provided any examples of what would constitute a high amylose starch. The USPTO does not have laboratory facilities in order to determine the percentage of amylose present.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 18, it is unclear if applicant is claiming the composition comprises at least amylose-containing starch or at least "one" amylose-containing starch. On page 2 of the specification states "at least one". Furthermore, applicant has employed the terminology comprising allowing for the inclusion of any other component into the composition, therefore, it is unclear what "at least amylose-containing starch" would further limit. Clarification is requested. Claims 19 and 21-24 contain similar phrases and are rejected for the same reasons.

It is further unclear what applicant is claiming by "stabilizing". After a review of the specification, it appears applicant is claiming amylose-containing starch compounds protect color treated hair from fading. Clarification and Appropriate correction is requested.

Regarding claim 20, it is unclear what percentage of the high amylose containing starch is starch and amylose.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18 and 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Melby et al. (US Patent 6,365,140).

Melby discloses aqueous modified starch solutions comprising high levels of modified starch in a cosmetically acceptable medium for the treatment of keratin-containing substrate (abstract). The starch is present from about 1% to about 49.5% by weight (column 4, lines 52-53). The starch base from which the cationic or nonionic modified starch is derived can come from corn (column 7, lines 65-66; column 8, lines 22-23). The compositions can be used, in particular, in the form of a shampoo, a rinsing lotion, a cream or a treatment product which can be applied before or after coloring or bleaching, before or after shampooing, before or after perming or before or after straightening, and can also adopt the form of a coloring product, a setting lotion, a

brushing lotion, a bleaching product, a perking product or a straightening product
(column 12, lines 33-40).

Claims 18 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kabushiki (EP 0 469 232).

Kabushiki discloses a material for a hair cosmetic and a hair cosmetic capable of curing hair damage by cold permanent wave treatment, hair coloring treatment, ect. and for improving the color, gloss, feel and combing smoothness of the hair. The hair cosmetic contains at least one agent selected from a group including extracts obtained from corm grains including amylose (abstract). The amount of added amylose may be 0.5 to 50% by weight. Amylose is disclosed as giving a water retention property to the hair (page 6, lines 3-5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melby et al. (US Patent 6,365,140).

The teachings of Melby are discussed above and applied in the same manner.

Melby does not disclose the use of high amylose-containing starch.

Based on Applicants admission on the record of the amylose containing starches being obvious variants of each other (response dated November 9, 2007), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used a high amylose containing starch in place of the nonionic, cationic corn starch component taught by Melby with the expectation of making a similar hair care product yielding similar results.

Claims 19-23 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kabushiki (EP 0 469 232).

The teachings of Kabushiki are discussed above and applied in the same manner.

Kabushiki does not disclose the use of high amylose-containing starch, cationically modified starch and nonionically modified starch or the form of the composition.

Based on Applicants admission on the record of the amylose containing starches being obvious variants of each other (response dated November 9, 2007), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used a high amylose containing starch in place of the corn starch component taught by Kabushiki with the expectation of making a similar hair care product yielding similar results. Additionally, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used the starch in any cosmetic composition intended for use in the hair since the prior art discloses the use of cosmetic composition for use in the hair.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

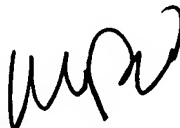
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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